MALAYSIA NATIONAL INSURANCE SDN. BHD.

v.

LIM TIOK

SUPREME COURT, KUALA LUMPUR
LAMIN MOHD YUNUS PCA
CHONG SIEW FAI CJ (SABAH & SARAWAK)
PEH SWEE CHIN FCJ
EDGAR JOSEPH JR FCJ
MOHAMED DZAIDDIN FCJ
[CIVIL APPEAL NO: 02-236-1992]

CONSTITUTIONAL LAW: *Courts - Stare decisis - Federal Court - Review of previous decision - Prerequisites - Whether Court feels free to depart - Whether review relevant to resolution of dispute - Whether Court will embark on academic inquiry*

CONSTITUTIONAL LAW: *Courts - Stare decisis - Obiter dicta - Whether previous decision can be overruled by obiter dicta*

CIVIL PROCEDURE: *Judgments and orders - Consent judgment - Consent order - Whether there is distinction between consent order and other orders of Court*

INSURANCE: *Motor insurance - Compulsory third party motor insurance - Whether liability of insurers against third party risks limited - Road Traffic Ordinance 1958, s. 80(1) - Whether limitation on liability effective against third party - Section 80(4)*

INSURANCE: *Motor insurance - Compulsory third party motor insurance - Road Traffic Ordinance 1958, s. 80(1) - Interpretation - Whether to have regard to terms of policy - Scope of insurer's risks*

INSURANCE: *Motor insurance - Compulsory third party motor insurance - Insurers - Liability to third party - Whether liable for total sum payable under judgment in respect of liability of insured to third party - Road Traffic Ordinance 1958, s. 80(1)*

TORT: *Negligence - Independent tortfeasors - Responsibility for accident equally apportioned - Whether each liable for total sum of damages payable under judgment - Whether third party can recover total sum from insured - Whether third party entitled to recover total sum from insured's insurer - Whether insurer bound by statute to indemnify insured for total sum*

INSURANCE: *Motor insurance - Compulsory third party motor insurance - Road Traffic Ordinance 1958, s. 80(1) - Whether proper to restrict amplitude of s. 80(1) - Purpose of legislation on compulsory motor insurance against third party risks - Provision of full and effective protection to injured third parties*

INSURANCE: *Motor insurance - Compulsory third party motor insurance - Road Traffic Ordinance 1958, s. 80(1) - Tan Chik Ibrahim v. Safety Life & General Insurance Sdn. Bhd. - Whether still good law*

INSURANCE: *Motor insurance - Compulsory third party motor insurance - Road Traffic Ordinance 1958, s. 80(1) - Whether should be interpreted subject to s. 10(1) and (2) of Civil Law Act 1956*

INSURANCE: *Motor insurance - Compulsory third party motor insurance - Claim of third party - Whether affected by any order on apportionment of responsibility between tortfeasors*

WORDS & PHRASES: *"Legally liable" - "Responsible in law" - "Liability"*

WORDS & PHRASES: *"... pay to the person entitled to the benefit of the judgment any sum payable thereunder in respect of liability ..." - Road Traffic Ordinance 1958, s. 80(1)*

The sole question for decision in the instant appeal concerned the extent of the liability of the appellant ('the Insurer') as an insurer against third party risks, pursuant to a direct action brought against it by the injured third party respondent ('the Third Party') for satisfaction of a judgment obtained in a running down action under s. 80(1) of the Road Traffic Ordinance 1958 ('the Ordinance') now s. 96(1) of the Road Transport Act 1987 ('the Act'). The essential facts were as follows. The Insurer had issued a compulsory motor insurance policy ('the Policy') indemnifying the Insured and its authorised drivers, in the event of an accident caused by or arising out of the use of a motor lorry ('BAP') belonging to the Insured, against **all sums** for which the Insured shall become **legally liable** to pay in respect of death, bodily injury or damage to property. As it transpired, the Third Party who was travelling as a passenger in another motor lorry ('NC') sustained serious injuries as a result of a collision between BAP and NC. The collision was due to the negligence of both the driver of BAP ('Chai') and the driver of NC ('Yap').

Subsequently, the Third Party obtained a consent judgment against Yap, Chai and the Insured for, *inter alia*, RM125,000 as general and special damages and an order that liability be determined. By a supplemental consent order,

the trial Judge further ordered that responsibility for the injury to the Third Party be apportioned equally between Yap on the one hand and Chai and (vicariously) the Insured on the other, with a rider that the order would not be binding on the Third Party. The Third Party contended that the liability of Chai and (vicariously) the Insured under the consent judgment was covered by the Policy. Thus, it was submitted that by reason of s. 80(1) of the Ordinance the Insurer was liable to the Third Party for the total sum payable under the consent judgment - following the common law rule that where the same or indivisible damage is the conjoined effect of separate and independent acts, the persons responsible are independent tortfeasors and each of them is responsible for the whole of the damage sustained by the injured party. Conversely, the Insurer argued that it was only liable to satisfy half the sum payable under the consent judgment by reason of the supplemental consent order.

In the result, the trial Judge entered judgement against the Insurer in favour of the Third Party for the total sum payable under the consent judgment. In so ruling, the High Court distinguished the Supreme Court case of *Tan Chik Ibrahim v. Safety Life & General Insurance Sdn. Bhd.* (*'Tan Chik'*) from the instant case on account that responsibility between the defendants in *Tan Chik* had been determined and apportioned by the Court after a full hearing, whereas in the instant case the apportionment of equal responsibility between the defendants was undertaken by consent.

Held:

Per Edgar Joseph Jr FCJ:

[1] There are two pre-requisites to a review by the Federal Court of a previous Federal Court decision, *viz*: (i) the Federal Court should not embark on such a review unless it feels free, if necessary, to depart from the reasoning and decision; and (ii) the Federal Court is satisfied that the review will be of relevance to the resolution of the dispute before it. The Federal Court will not embark on an inquiry which is only of academic interest - more so where the inquiry involves a review of its own previous decision - as it cannot be right to hold, *obiter*, that such a previous decision is wrong.

[2] In terms of efficacy there is no distinction between a consent order and any other order of the Court. Thus, there was no distinction between *Tan Chik* and the instant case. The cardinal issue in the instant appeal was whether *Tan Chik* was wrongly decided, and if so, whether it should be overruled.

[3] The expression "legally liable" appearing in the Policy has a meaning equivalent to "responsible in law". "Liability" in law means a duty owed to another which is enforceable by sanctions; and, when used in the context of insurance liability it ordinarily means liability to pay a definite sum imposed by a final judgment against an insured or by an award or a settlement by way of an agreement.

[4] Since the liability of insurers against third party risks under s. 80(1) of the Ordinance is unlimited, one effect of s. 80(4) of the Ordinance is that any kind of limitation - whether by stipulating that the insured has to pay the first RM*x* of any liability or that the insurance company will not pay more than RM*y* of any liability, or by means of a rateable contribution clause - will be void and ineffective as against a third party who can recover the full amount from the insurance company.

[5] Section 80(4) of the Ordinance also contemplates a situation where a policy is voidable at common law on the ground of non-disclosure or misrepresentation of material facts, and the insurance company has not taken the necessary steps under s. 80(3) of the Ordinance to obtain a declaration as to non-liability. In such a situation, the insurance company will still be legally obliged to pay a third party in enforcement proceedings brought under s. 80(1) of the Ordinance but it has a right of recovery from its insured.

[6] As the language of s. 80(1) of the Ordinance expressly directs attention to the liability covered by "the terms of the policy", it is necessary, in construing the sub-section, to have regard to the terms of the policy (subject to statutory provisions that render certain conditions or restrictions of no effect against third parties). Thus, insurers against third party risks are not obliged to carry a wider scope of liability than they have agreed by their policy to carry.

[7] The interrelation between ss. 75(1), 80(1) and 80(4) of the Ordinance as well as the provisions of the third party liability clause in the Policy were central to the instant appeal.

[8] Having regard to the natural meaning of the words in s. 80(1) of the Ordinance and the purpose underlying the legislation for compulsory motor insurance against third party risks in road accidents (which is to give full and effective protection to injured third parties), it is clear that the insurer is required to pay the third party the **total sum** payable under the judgment in respect of the liability of the insured to the third

party. In effect, s. 80(1) of the Ordinance confers upon the third party (who is a stranger to the insurance contract) who has obtained a judgment against the insured, a right to recover from the insurer what he may recover from the insured.

[9] At common law, if each of several persons, not acting in concert, commits a tort against another person substantially contemporaneously and causing the same or indivisible damage, each tortfeasor is liable for the same damage. In the instant case, Yap, Chai and (vicariously) the Insured were undoubtedly independent tortfeasors and each was liable for the same damage caused; hence, each of them was liable to pay the **total sum** of the damages, costs and interest payable under the consent judgment **notwithstanding** the fact that responsibility for the accident had been equally apportioned between them under the supplemental consent order. And since this was the sum which the Third Party could recover from the Insured, this was also the sum which the Third Party was entitled to recover from the Insurer. This was the sum which the Insured was **legally liable** to pay the Third Party within the meaning of the third party liability clause of the Policy, and also the sum for which the Insurer was bound by statute to indemnify the Insured.

[10] There is no valid reason for restricting the amplitude of s. 80(1) of the Ordinance that is clearly intended to provide comprehensive protection to drivers of motor vehicles not only for their own good but for the benefit of those who suffer death or injury by the use of such vehicles on public roads. To hold otherwise will render such protection illusory, and can result in injustice and defeat the purpose underlying legislation on compulsory motor insurance against third party risks which is to give full and effective protection to injured third parties.

[11] Consequently, *Tan Chik* - insofar as it holds that in a situation involving independent tortfeasors, insurers of motor vehicles against third parties are liable to satisfy judgments obtained against their insured to the extent only of the proportion of responsibility for the accident adjudged against their insured - should **not** be followed.

[12] Section 80(1) of the Ordinance makes insurance companies liable on the statute in respect of the 'classes of liability' against which they were bound to insure, but with **no** limit as to quantum at all. The words "... pay to the person entitled to the benefit of the judgment any sum payable thereunder in respect of liability ..." in s. 80(1) of the Ordinance mean the "judgment sum", ie, "the total sum payable thereunder".

[13] Section 80(1) of the Ordinance should **not** be interpreted subject to s. 10(1) and (2) of the Civil Law Act 1956 ('the CLA'). Upon the common law principle of fault liability for road accidents in this country there have been engrafted two statutory measures - one being the provisions for indemnity and contribution between tortfeasors (which is unknown to the common law), ie, s. 10(1) and (2) of the CLA, and the other being compulsory third party insurance legislation. It is important to fit these three elements - the common law principle, the contribution legislation, and the compulsory third party insurance legislation - in such a manner as to ensure that they work in harmony without occasioning injustice. Section 10(1) and (2) of the CLA are concerned with the reformation of procedural law in proceedings against, and contribution between, joint or several tortfeasors; thus, it is difficult to see what relevance the sub-sections have to the question of the extent of the liability of insurers against third party risks in a situation such as the present which is an entirely separate issue depending upon the construction of the relevant compulsory third party insurance legislation and the terms of the relevant contract of insurance.

[14] Insofar as third party liability under the Ordinance is concerned, injured third parties, in seeking to enforce satisfaction of a judgment obtained against insurers by virtue of s. 80(1) of the Ordinance, will **not** be affected by any order as to the apportionment of responsibility between tortfeasors whether joint or independent. However, if a tortfeasor is called upon to pay the full amount in the first instance, his insurer will pay the full amount but will be subrogated to his right of contribution and should be left ultimately bearing only his due proportion.

Held:

Per Lamin Mohd Yunus PCA:

[1] There is no legal basis for the proposition that the claim of an innocent third party is subject to the apportionment of liability as between those who caused the accident. The innocent third party should not be penalised by having his claim reduced according to the liability as apportioned; it is only proper and fair not to penalise the party who has nothing to do with the cause of the accident. The innocent third party must be fully compensated **irrespective** of the apportionment of liability.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation of Headnotes]*

UNDANG-UNDANG PERLEMBAGAAN: *Mahkamah - Stare decisis - Mahkamah Persekutuan - Kajian semula keputusan yang dahulu - Prasyarat- Samada Mahkamah bebas untuk menyimpang darinya - Samada kajian semula relevan dengan penyelesaian pertikaian - Samada Mahkamah akan memulakan siasatan akademik*

UNDANG-UNDANG PERLEMBAGAAN: *Mahkamah - Stare decisis - Obiter dicta - Samada keputusan yang dahulu boleh ditolak oleh obiter dicta*

PROSEDUR SIVIL: *Penghakiman dan perintah - Penghakiman persetujuan - Perintah persetujuan - Samada terdapatnya perbezaan antara perintah persetujuan dan perintah-perintah Mahkamah yang lain*

INSURANS: *Insurans motor - Insurans motor wajib pihak ketiga - Samada tanggungan penanggung insurans terhadap risiko pihak ketiga terhad - Ordinan Lalulintas 1958, s. 80(1) - Samada penghadan ke atas tanggungan berkuatkuasa terhadap pihak ketiga*

INSURANS: *Insurans motor - Insurans motor wajib pihak ketiga - Ordinan Lalulintas 1958 s.80(1) - Pentafsiran - Samada harus mempertimbangkan terma-terma polisi - Bidang risiko penanggung insurans*

INSURANS: *Insurans motor - Insurans motor wajib pihak ketiga - Penanggung Insurans - Tanggungan kepada pihak ketiga - Samada bertanggungan bagi jumlah penuh yang kena dibayar di bawah penghakiman berhubung dengan tanggungan pengambil insurans kepada pihak ketiga - Ordinan Lalulintas 1958, s. 80(1)*

TORT: *Kecuaian - Pelaku tort bebas - Tanggungjawab bagi kemalangan yang diumpukkan samarata - Samada setiap satunya bertanggungan bagi jumlah penuh gantirugi yang kena dibayar di bawah penghakiman - Samada pihak ketiga boleh mendapatkan semula jumlah penuh daripada pengambil insurans - Samada pihak ketiga berhak untuk mendapatkan semula jumlah penuh daripada penanggung insuran pihak pengambil insurans - Samada penanggung insurans terikat oleh statut untuk menanggung-rugi pengambil insurans bagi jumlah sepenuhnya*

a ***INSURANS:*** *Insurans motor - Insurans motor wajib pihak ketiga - Ordinan Lalulintas 1958 s.80(1) - Samada wajar untuk menghadkan bidang s. 80(1) - Tujuan perundangan ke atas insurans motor wajib terhadap risiko pihak ketiga - Peruntukan perlindungan sepenuhnya dan berkesan kepada pihak-pihak ketiga yang tercedera*

b ***INSURANS:*** *Insurans motor - Insurans motor wajib pihak ketiga - Ordinan Lalulintas 1958, s. 80(1) - Tan Chik Ibrahim lwn. Safety Life & general Insurance Sdn Bhd. - Samada masih merupakan undang-undang yang baik*

c ***INSURANS:*** *Insurans motor - Insuran motor wajib pihak ketiga - Ordinan Lalulintas 1958, s. 80(1) - Samada seharusnya ditafsirkan tertakluk kepada s.10(1) dan (2) Akta Undang-Undang Sivil 1956*

d ***INSURANS:*** *Insurans motor - Insurans motor wajib pihak ketiga - Tuntutan pihak ketiga - Samada terjejas oleh mana-mana perintah mengenai perumpukan tanggungjawab antara pelaku-pelaku tort*

PERKATAAN & UNGKAPAN: *"Legally liable" - "Responsible in law" - "Liability"*

e ***PERKATAAN & UNGKAPAN:*** *"...pay to the person entitled to the benefit of the judgment any sum payable thereunder in respect of liability ...." - Ordinan Lalulintas 1958, s. 80(1)*

f Satu-satunya persoalan untuk keputusan dalam rayuan semasa ini berkaitan dengan had tanggungan perayu ('Penanggung Insurans') sebagai penanggung insurans terhadap risiko pihak ketiga, selaras dengan satu tindakan terus yang dimulakan terhadapnya oleh responden pihak ketiga yang tercedera ('pihak Ketiga tersebut") untuk pembayaran satu penghakiman yang diperolehi dalam tindakan pelanggaran di bawah s. 80(1) Ordinan Lalulintas 1958 ('Ordinan') kini dikenali senagai s. 96(1) Akta Pengangkutan Jalan 1987 ('Akta') Fakta-fakta penting adalah seperti berikut. Penanggung Insurans telah mengeluarkan polisi insurans wajib motor ('Polisi') yang menanggung rugi pengambil insurans dan pemandu-pemandunya yang diberi kuasa, sekiranya berlaku kemalangan yang disebabkan oleh atau berbangkit daripada kegunaan sebuah lori bermotor ("BAP") kepunyaan Pengambil Insurans, terhadap **kesemua jumlah** bagi yang mana Pengambil Insurans akan menjadi **bertanggungan secara sahnya di sisi undang-undang** untuk membayar berhubung dengan kematian, kecederan badan atau kerosakan pada harta.

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Sepertimana yang berlaku, Pihak Ketiga tersebut yang merupakan penumpang dalam sebuah motor lori yang lain ("NC") telah mengalami kecederaan yang serius akibat satu perlanggaran antara BAP dan NC. Perlanggaran tersebut adalah disebabkan oleh kecuaian kedua-duanya, pemandu BAP ("Chai") dan pemandu NC ("Yap").

Berikutan itu, pihak ketiga tersebut telah memperolehi satu penghakiman persetujuan terhadap Yap, Chai dan Pengambil Insurans bagi, antara lainnya, RM125,000 sebagai gantirugi am dan khas dan perintah supaya halperkara tanggungan ditetapkan. Melalui satu perintah persetujuan tambahan, Hakim perbicaraan selanjutnya telah memerintahkan tanggunganjawab bagi kecederaan kepada pihak ketiga tersebut hendaklah diumpukkan secara sama rata antara Yap di satu pihak dan Chai dan (secara tidak langsung) Pengambil Insurans di satu pihak yang lain, dengan satu rider bahawa perintah itu adalah tidak dalam apa cara pun mengikat pihak ketiga tersebut. Pihak ketiga tersebut menegaskan bahawa tanggungan Chai dan (secara tidak langsung) Pengambil Insurans di bawah penghakiman yang dipersetujui telah dilindungi oleh Polisi. Dengan itu, dihujahkan bahawa disebabkan oleh s. 80(1) Ordinan, Penanggung Insurans adalah bertanggungan kepada pihak ketiga bagi jumlah penuh yang kena dibayar di bawah penghakiman persetujuan tersebut - mengikut kaedah common law bahawa di mana gantirugi yang sama atau yang tidak boleh dibahagikan adalah kesan bergabung perbuatan-perbuatan yang berasingan dan bebas, orang-orang yang bertanggungjawab adalah pelaku-pelaku tort yang bebas dan setiap satu daripada mereka adalah bertanggungjawab bagi keseluruhan gantirugi yang dialami oleh pihak yang tercedera. Sebaliknya, Penanggung Insurans berhujah bahawa ianya hanya bertanggungan untuk menjelaskan setengah daripada jumlah yang kena dibayar di bawah penghakiman persetujuan tersebut disebabkan oleh perintah persetujuan tambahan.

Akibatnya, Hakim perbicaraan telah memasukkan penghakiman terhadap Penanggung Insurans atas nama pihak ketiga tersebut bagi jumlah keseluruhan yang kena dibayar di bawah penghakiman persetujuan tersebut. Dalam memutuskan sedemikian, Mahkamah Tinggi telah membezakan kes Mahkamah Agung *Tan Chik Ibrahim lwn. Safety Life & General Insurance Sdn. Bhd.* ("Tan Chik") daripada kes semasa ini atas perhatian bahawa tanggungjawab antara defendan-defendan dalam *Tan Chik* telah ditentukan dan diumpukkan oleh Mahkamah selepas satu perbicaraan penuh, sedangkan dalam kes semasa perumpukkan tanggungjawab bersama antara defendan-defendan telah dilaksanakan melalui persetujuan.

Diputuskan
Oleh Edgar Joseph Jr HMP:

[1] Terdapat dua pra-syarat untuk suatu kajian semula dilakukan oleh Mahkamah Persekutuan akan keputusan Mahkamah Persekutuan yang lalu; iaitu :(i) Mahkamah Persekutuan tidak seharusnya memulakan kajian semula yang sedemikian kecuali ianya berasa bebas untuk berbuat sedemikian, jika perlu, untuk menyimpang daripada sebab-sebab dan keputusan; dan (i) Mahkamah Persekutuan berpuashati bahawa kajian semula itu perlu bagi penyelesaian pertikaian di hadapannya. Mahkamah Persekutuan tidak akan memulakan satu siasatan yang mana adalah hanya untuk kepentingan akademik - lebih-lebih lagi di mana siasatan itu melibatkan suatu kajian semula keputusannya sendiri yang terdahulu - kerana ianya tidak mungkin wajar untuk memutuskan, obiter, bahawa keputusan terdahulu yang sedemikian adalah salah.

[2] Dalam segi keberkesanan pula, tidak terdapat apa-apa perbezaan antara perintah persetujuan dan mana-mana perintah Mahkamah yang lain. Dengan itu, tidak terdapat perbezaan antara *Tan Chik* dan kes semasa ini. Isu utama dalam rayuan semasa ini adalah sama ada *Tan Chik* telah diputuskan secara salah, dan jika sedemikian, sama ada ianya seharusnya ditolak.

[3] Ungkapan "legally liable" yang terdapat dalam Polisi mempunyai makna yang bersamaan dengan "responsible in law". "Liability" di sisi undang-undang bermakna sesuatu kewajipan yang harus dilaksanakan terhadap satu pihak yang lain yang mana boleh dikuatkuasakan melalui persetujuan; dan, apabila digunakan dalam konteks tanggungan insurans ianya secara biasa bermakna tanggungan untuk membayar sesuatu jumlah yang tetap yang dikenakan oleh satu penghakiman yang muktamad terhadap seseorang yang diinsuranskan atau melalui satu award atau satu penjelasan melalui satu persetujuan.

[4] Oleh kerana tanggungan Penanggung Insurans terhadap risiko pihak ketiga di bawah s. 80(1) Ordinan adalah tidak terhad, satu-satunya kesan s. 80(4) Ordinan tersebut adalah bahawa sebarang jenis penghadan - samada dengan menetapkan bahawa Pengambil Insurans kena membayar RMx pertama mana-mana tanggungan atau syarikat insurans tersebut tidak akan membayar lebih daripada RMy mana-mana tanggungan, atau menurut cara fasal sumbangan mengikut kadar - akan menjadi batal dan tidak berkesan terhadap pihak ketiga yang boleh mendapatkan jumlah sepenuhnya daripada syarikat insurans itu.

[5] Seksyen 80 (4) Ordinan juga menunjukkan satu situasi di mana sestau polisi itu boleh dibatalkan pada common law atas alasan ketakdedahan atau salah nyataan fakta-fakta material, dan syarikat insurans tersebut masih belum mengambil langkah-langkah yang perlu di bawah s. 80(3) Ordinan bagi mendapatkan satu pengisytiharan berhubung dengan ketidak-tanggungan. Dalam situasi yang sedemikian, syarikat insurans itu masih berkewajipan secara sah di sisi undang-undang untuk membayar pihak ketiga dalam prosiding-prosiding penguatkuasaan yang dimulakan di bawah s. 80(1) Ordinan tetapi ianya berhak untuk mendapatkan semula daripada pihak pengambil insuransnya.

[6] Oleh kerana s. 80(1) Ordinan dengan nyatanya mengarahkan perhatian kepada tanggungan yang dilindungi oleh "the terms of the policy", ianya adalah perlu, dalam meneliti sub-seksyen berkenaan, untuk menimbangkan terma-terma polisi tertakluk kepada peruntukan-peruntukan berkanun yang mengemukakan beberapa syarat atau sekatan yang tidak berkesan terhadap pihak ketiga. Dengan itu, penanggung insurans terhadap risiko pihak ketiga tidak berkewajipan untuk menanggung satu bidang tanggungan yang lebih besar daripada yang telah mereka bersetuju untuk menanggung menurut polisi mereka.

[7] Perkaitan antara ss.75(1), 80(1) dan 80(4) Ordinan dan juga peruntukan-peruntukan fasal tanggungan pihak ketiga dalam Polisi adalah penting kepada rayuan semasa ini.

[8] Mengambilkira maksud sebenar perkataan-perkataan dalam s. 80(1) Ordinan dan tujuan disebalik perundangan bagi insurans motor wajib terhadap risiko pihak ketiga dalam kemalangan jalan raya (yang mana hendaklah memberikan perlindungan sepenuhnya dan yang berkesan kepada pihak ketiga yang tercedera), ianya adalah jelas bahawa penanggung insurans adalah dikehendakki untuk membayar kepada pihak ketiga jumlah penuh yang kena dibayar di bawah penghakiman berhubung dengan tanggungan pengambil insurans kepada pihak ketiga. Secara berkesannya, s. 80(1) Ordinan memberikan pihak ketiga (yang merupakan orang yang tidak dikenali kepada kontrak insurans itu) yang telah mendapatkan penghakiman terhadap pengambil insurans, suatu hak untuk mendapatkan semula daripada penanggung insurans apa yang mungkin dapat diperolehi semula daripada pengambil insurans

[9] Menurut common law, jika setiap satu daripada beberapa orang, yang tidak bertindak seiringan, secara kontemporarinya melakukan tort terdapat seorang yang lain dan menyebabkan gantirugi yang sama atau tidak boleh

dibahagikan, setiap pelaku tort tersebut adalah bertanggungan bagi gantirugi yang sama. Dalam kes semasa, Yap, Chai dan (secara tidak langsung) Pengambil Insurans adalah tanpa diragui merupakan pelaku-pelaku tort secara bebas dan setiap satu daripada mereka bertanggungan bagi gantirugi yang sama yang telah disebabkan; maka, setiap satu daripada mereka adalah bertanggungan untuk membayar jumlah penuh gantirugi tersebut, kos, dan faedah yang kena dibayar di bawah penghakiman persetujuan itu meskipun terdapat fakta bahawa tanggungjawab bagi kemalangan itu telah diumpukkan secara sama di antara mereka di bawah perintah persetujuan tambahan. Dan oleh kerana ini merupakan jumlah yang Pihak Ketiga boleh perolehi semula daripada Pengambil Insurans, ini adalah juga jumlah yang Pihak Ketiga berhak untuk perolehi semula daripada Penanggung Insurans. Ini adalah jumlah yang Pengambil Insurans bertanggungan secara sahnya untuk membayar Pihak Ketiga tersebut di dalam maksud fasal tanggungan Pihak Ketiga Polisi tersebut, dan juga merupakan jumlah bagi yang mana Penanggung Insurans adalah terikat oleh statut untuk menanggung rugi Pengambil Insurans.

[10] Tidak terdapat alasan-alasan yang sah bagi menyekat keluasan s.80(1) bahawa ianya jelas bertujuan untuk memberikan perlindungan komprehensif kepada pemandu-pemandu kenderaan bermotor bukan sahaja untuk kebaikan mereka sendiri dengan penggunaan kenderaan yang sedemikian di jalan-jalan awam. Untuk memutuskan sebaliknya akan menjadikan perlindungan yang sedemikian hanya sebagai bayang-bayang, dan boleh mengakibatkan ketidak-adilan dan tidak memberi tujuan sebenar disebalik perundangan mengenai insuran wajib motor terhadap risiko pihak ketiga yang mana adalah untuk memberikan perlindungan sepenuhnya dan yang bekesan kepada pihak ketiga yang tercedera.

[11] Akibatnyanya, *Tan Chik* - sejauhmana ianya berpendapat bahawa dalam situasi yang melibatkan pelaku tort yang bebas, penanggung insurans kenderaan bermotor terhadap pihak ketiga adalah bertanggungan untuk menjelaskan penghakiman yang diperolehi terhadap pengambil insuran mereka hanya setakat bahagian tanggungajawab bagi kemalangan yang dipertanggungkan kepada pengambil insurans mereka - tidak seharusnya dituruti.

[12] Seksyen 80(1) Ordinan menjadikan syarikat-syarikat insurans bertanggungan atas statut berhubung dengan "classes of liability" terhadap yang mana mereka terikat untuk menginsuranskan, tetapi tidak mempunyai had berhubung dengan kuantum sama sekali. Perkataan "....pay to the

person entitled to the benefit of the judgment any sum payable thereunder in respect of liability ....” dalam s. 80(1) Ordinan tersebut bermakna ”judgment sum”, iaitu “the total sum payable thereunder”.

[13] Seksyen 80(1) Ordinan tidak seharusnya ditafsirkan tertakluk kepada s. 10(1) dan (2) Akta Undang-Undang Sivil 1956 (“CLA”). Sebagai tambahan kepada prinsip common law mengenai tanggungan kesalahan bagi kemalangan jalan raya dalam negeri ini telah digubal dua langkah-langkah statutori - satu adalah peruntukan-peruntukan bagi tanggunganrugi dan sumbangan antara pelaku-pelaku tort (yang mana tidak diketahui oleh common law), iaitu s.10(1) dan (2) CLA, dan yang satu lagi adalah merupakan perundangan insurans wajib pihak tiga. Adalah penting untuk menyesuaikan ketiga-tiga unsur ini - prinsip common law, perundangan sumbangan, dan perundangan insurans wajib pihak ketiga - dalam cara yang memastikan bahawa mereka bekerjasama tanpa menimbulkan ketidakadilan. Seksyen 10(1) dan (2) CLA adalah berkaitan dengan pemilihan undang-undang prosedur dalam prosiding terhadap, dan sumbangan antara, pelaku-pelaku tort secara berasingan atau bersesama; dengan itu subseksyen itu mempunyai perkaitan yang amat kecil kepada had tanggungan penanggung insurans terhadap risiko pihak ketiga yang mana adalah isu yang sama sekali berlainan bergantung pada pembentukan perundangan insurans wajib pihak ketiga yang relevan dan terma-terma kontrak insurans yang relevan.

[14] Sejauhmana tanggungan pihak ketiga di bawah Ordinan adalah berkaitan, pihak ketiga yang tercedera, sewaktu cuba untuk menguatkuasakan pembayaran sesuatu penghakiman yang diperolehi terhadap penanggung insurans menurut s. 80(1) Ordinan, tidak akan terjejas oleh mana-mana perintah berhubung dengan perumpukkan tanggungjawab antara pelaku-pelaku tort sama ada secara bersesama atau secara bebas. Walaubagaimanapun, jika sesuatu pelaku tort diminta untuk membayar sepenuhnya pada awalnya, penanggung insurans nya akan membayar jumlah sepenuhnya tetapi tidak akan disubrogasikan terhadap haknya bagi sumbangan dan seharusnya dibiarkan akhirnya menanggung hanya bahagiannya yang kena dibayar sahaja.

Diputuskan:
Oleh Lamin Mohd Yunus PMR:

[1] Tidak terdapat asas sah bagi mencadangkan bahawa tuntutan pihak ketiga yang tidak bersalah tertakluk kepada perumpukan tanggungan antara mereka-mereka yang telah menyebabkan kemalangan itu. Pihak ketiga yang tidak bersalah itu tidak seharusnya dipersalahkan dengan mengurangkan

tuntutannya menurut tanggungan sepertimana yang diumpukkan; ianya adalah wajar dan adil untuk tidak mendenda pihak yang tidak mempunyai perkaitan langsung dengan sebab kemalangan itu. Pihak ketiga yang tidak bersalah itu mestilah diberikan pampasan yang sepenuhnya tanpa mengambil kira perumpukan tanggungan tersebut.

[Rayuan ditolak.]

Cases referred to:

Tan Chik bin Ibrahim v. Safety Life and General Insurance Sdn. Bhd. [1987] 1 MLJ 217 ***(ovrd)***

Bankers and Traders Insurance Co. Ltd. v. National Insurance Co. Ltd. [1985] 1 WLR 734 ***(refd)***

De Lasalla v. De Lasalla [1979] 3 WLR 390 ***(refd)***

Palmer & Anor. v. Durnford Ford & Anor. [1992] 2 All ER 122 ***(refd)***

Cohen v. Jonesco [1926] 1 KB 119 ***(cit)***

In re South American and Mexican Company, ex parte Bank of England [1895] 1 Ch 37 ***(cit)***

Food Corp. of India v. Antclizo Shipping Corp. [1988] 2 All ER 513 ***(foll)***

Sun Life Assurance Co. of Canada v. Jervis [1944] 1 All ER 469 ***(cit)***

Ainsbury v. Millington [1987] 1 All ER 929 ***(refd)***

Nominal Defendant (Qld) v. Taylor [1982] 56 ALJR 698 ***(cit)***

Girard v. Commercial Standard Insce Co. [1944] 152 P (2d) 509 ***(cit)***

Broadlands Properties Ltd. v. Guardian Assurance Co. Ltd. [1984] 3 ANZIC 60.552) ***(cit)***

Zurich General Accident and Liability Insurance Co. Ltd. v. Morrison [1942] 72 L1.L Rep 167 ***(refd)***

Harker v. Caledonian Insurance [1979] 2 LL Rep. 193 ***(refd)***

Oli Mohamed v. Keith Murphy & Anor. [1969] 2 MLJ 244 ***(cit)***

Dingle v. Associated Newspapers Ltd. [1961] 2 QB 162 ***(cit)***

Drinkwater v. Kimber [1952] 2 QB 281 ***(cit)***

Austin v. Zurich General Accident And Liability Insurance Co. Ltd. [1945] 1 All ER 316 ***(cit)***

Legislation referred to:

Civil Law Act 1956, s. 10(1), 10(2)
Road Transport Act 1987, ss. 91(1), 91(4), 94, 95, 96(1), 96(2)(a), 96(4), 96(5)
Road Traffic Ordinance 1958, ss. 75(1), 75(4), 78, 79, 80(1), 80(2)(a), 80(3), 80(4), 80(5)
Road Traffic Act 1930 [UK], ss. 36, 38
Road Traffic Act 1934 [UK], ss. 10(1), 10(4), 12

Other sources referred to:

Shawcross on Motor Insurance, 2nd Edn., pp. 282, 283, 514
Halsbury's Laws of England, 3rd Edn., Vol. 22, para. 773
Halsbury's Laws of England, 4th Edn., Vol. 25, para. 779
Negligence on the Highway, O.C. Mazengarb QC, p. 272

[Appeal from High Court, Kuala Lumpur; Suit No: 02-236-1992]

For the appellant - Dr. Cyrus V. Das (Zainur Zakaria & S. Nanthabalan with him); M/s. Zainur Zakaria & Co.
For the respondent - Khoo Eng Chin; M/s. Khoo & Sidhu

JUDGMENT

Edgar Joseph Jr FCJ:

The sole question for decision in this appeal concerns the **extent** of the liability of the Appellants, as Insurers Against Third Party Risks ('the Insurers'), who had issued a Compulsory Motor Insurance Policy ('the Policy'), in a direct action brought against them by the Respondent, an Injured Third Party ('the Third Party'), for satisfaction of a judgment obtained in a running down action, pursuant to s. 80(1) of the Road Traffic Ordinance 1958, ('the Ordinance') now s. 96(1) of the Road Transport Act 1987 ('the Act').

The essential facts underlying this appeal may be shortly stated.

The Insurers had issued to Syarikat Kenderaan Central (M) Sdn. Bhd. ('the Insured'), the Policy pursuant to and in terms complying with s. 75(1) of the Ordinance, now s. 91(1) of the Act, whereby they had agreed to indemnify the Insured and any authorised driver in the event of accident caused by or arising out of the use of a motor lorry bearing registration No. BAP 6167, of which the Insured was the registered owner, against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of death or bodily injury to any person or damage to property.

The Insurers had pursuant to s. 75(4) of the Ordinance, now s. 91(4) of the Act, duly delivered to the Insured, in respect of the Policy, a Certificate of Insurance in the prescribed form.

On 14 October 1977, during the currency of the Policy and while the Certificate of Insurance was in full force and effect, the Third Party whilst travelling as a passenger in another motor lorry, to wit, NC 3467, driven by Yap Mun Chuan along the Kuala Selangor Road, Sg. Piong, Kuala Selangor, sustained serious personal injuries as a direct result of a collision involving it and motor lorry No. BAP 6167 driven by Chai Ten Wai alias Ah Kow an authorised driver of the Insured within the meaning of the Policy. The cause of the collision was due to the negligent driving of both the drivers.

On 11 April 1981, the Third Party had brought an action in the High Court at Kuala Lumpur, being Civil Action No. P 162/81, against the said Yap Mun

Chuan, Chai Ten Wai and the Insured, citing them as the first, second and third defendants, respectively, to recover damages in respect of his personal injuries, loss and expenses and costs, and had duly given notice thereof in writing to the Insurers in terms complying with s. 80(2)(a) of the Ordinance, now s. 96(2)(a) of the Act.

On 5 June 1986, Mr. Justice Ajaib Singh had awarded a Consent Judgment in favour of the Third Party against Yap Mun Chuan, Chai Ten Wai and the Insured, for the sum of RM125,000 as general and special damages and for the sum of RM10,000 as costs and, lastly, ordered that liability was to be determined. By a Supplemental Consent Order dated 26 September 1991, awarded by Mr. Justice Wan Mohamed bin Mustapha, it was further ordered that responsibility for the injury to the Third Party be apportioned equally between Yap Mun Chuan on the one hand, and Chai Ten Wai and vicariously the Insured, on the other, **with a rider, that this order was in no way binding on the Third Party.** In other words, the Third Party was not a party to the consent judgment to apportion responsibility as aforesaid.

In these circumstances, the argument for the Third Party was that the liability of Chai Ten Wai and vicariously the Insured, **under the Third Party the total sum payable under the** Consent Judgment dated 5 June 1986 was covered by the terms of the Policy. Accordingly, it was contended that by reason of the provisions of s. 80(1) of the Ordinance, the Insurers were liable to pay to the Consent Judgment dated 5 June 1986 and the amount of costs, following the Common Law rule that where the same or indivisible damage is the conjoined effect of separate and independent acts, the persons responsible are independent tortfeasors and each of them is responsible for the whole of the damages sustained by the injured party.

On the other hand, the Insurers argue that they are only liable to satisfy **half** the sums payable under the Consent Judgment dated 5 June 1986 by reason of the Supplemental Consent Order dated 26 September 1991 whereby responsibility for the accident had been equally apportioned between Yap Mun Chuan on the one hand, and Chai Ten Wai and vicariously the Insured, on the other.

In the Court below, the only question argued was whether the decision of the Supreme Court in *Tan Chik bin Ibrahim v. Safety Life and General Insurance Sdn. Bhd.* [1987] 1 MLJ 217 applied. In that case, the Supreme Court had held that the right of a third party in a direct action against insurers against third party risks under a compulsory motor insurance policy could not be more extensive than the risks insured under such a policy. More particularly, the facts in that case were these:

The plaintiff was a pillion passenger on a Vespa motor scooter which had collided with a motor lorry, as a result of which he had sustained personal injuries. The plaintiff sued the rider of the scooter, as well as the owner and driver of the lorry. At first instance, the High Court had held that both the rider of the Vespa and the driver of the lorry were equally responsible for the collision and he apportioned responsibility and the amount of damages payable accordingly. Thereafter, in a direct action against the Insurers of the lorry, under s. 80(1) of the Road Traffic Ordinance 1958, the plaintiff sought to recover the entire sum of damages payable under the judgment aforesaid. The insurance policy of the Vespa rider did not cover passenger liability.

In a short but crisp passage in his judgment, the trial Judge, Mr. Justice Ajaib Singh J, held in favour of the defendant insurers on the following grounds:

> Under s. 80(1) of the Road Traffic Ordinance insurers are obliged to satisfy judgments obtained by third parties for damages for the death of or bodily injury to persons in motor accidents involving vehicles which are insured by them against third party risks. In this case the Safety Life & General Insurance Sdn. Bhd. were duty bound to satisfy the judgment to the extent of 50 per cent which the plaintiff had obtained against their own insured namely the owner and driver of the motor lorry, but they were not obliged to satisfy the other 50 per cent of the judgment which the plaintiff had obtained against the owner and rider of the motor Vespa Abdul Aziz bin Ibrahim as they had at no time covered him with any risk in respect of third party liability. In the circumstances therefore I held that the plaintiff was in no position to enforce against the defendants that part of the judgment which required the owner and rider of the motor-vespa Abdul Aziz bin Ibrahim to pay 50 per cent of the damages awarded.

On appeal, the judgment of Ajaib Singh J was upheld. Lee Hun Hoe CJ (Borneo) speaking for the Supreme Court said this:

> The insurer is not bound by statute to pay the third party the judgment given in his favour but only, "any sum payable thereunder ... ." In short, in our judgment, the insurer is under a duty to pay the amount which the insured person has been ordered by the trial Court to pay the third party including the insured's share of the taxed costs and interest under the judgment. In this case the trial Judge gave judgment in favour of the third party and apportioned the liability as well as the damages to be paid by the parties. ... In our view, the word "liability" used in s. 80(1) of the Ordinance means, "liability covered by the term of the policy." Moreover, the right of the third party to enforce a judgment given against an insured person is a right given to him by statute and not under the common law. As such the right of the third party is subject to the terms and conditions of the insurance policy.

In holding as aforesaid, Lee Hun Hoe CJ (Borneo) had followed the judgment of the Privy Council in *Bankers and Traders Insurance Co. Ltd. v. National Insurance Co. Ltd.* [1985] 1 WLR 734. In that case, their Lordships of the

Privy Council had to consider the liability of an insurer arising under s. 80(1) of the Ordinance. Their Lordships concluded that an insurer could not be held liable in law for a liability which it had not agreed to insure under the terms of the relevant policy. Lord Scarman speaking for the Board said this (*ibid* at pp. 736 to 738):

> It is plain from the terms of the owner's policy that the owner's insurers were not on risk when the car was being driven by another who had a policy of his own which covered him. Once it is recognised that only one of the two policies, namely the driver's policy, was on risk when Ko was driving it becomes plain upon the wording of s. 80(1) of the Ordinance that the driver's insurers must satisfy the third parties' judgment... . An attempt was made before the Board by Counsel for the owner's insurers to argue that in construing s. 80(1) one must disregard the terms of the policy. The submission is flatly contradicted by the language of the sub-section which expressly directs attention to the liability covered by 'the terms of the policy'. The Ordinance proceeds upon the basis of the terms of the policy, subject only to the specified exceptions and restrictions contained in ss. 78 and 79. No doubt it is for this reason that any person against whom a third party claims damages for personal injury arising out of a road accident is under a duty to provide the third party with information as to his insurance cover: s. 82(1).

In the event, in the present case, the learned trial Judge had concluded that *Tan Chik* was distinguishable, because in that case, responsibility between the defendants had been determined and apportioned by the Court after a full hearing, **whereas** here apportionment of equal responsibility had been undertaken by consent of Yap Mun Chuan, the Insured and its authorised driver Chai Ten Wai. He accordingly held in favour of the Third Party and entered judgment in his favour against the Insurers for the **total** sum payable under the Consent Judgment dated 5 June 1986. It is from this judgment that the Insurers have appealed to this Court.

It would be convenient if, at the outset, we disposed of the point made by the learned trial Judge, that *Tan Chik* was distinguishable. We note that the understanding on apportionment of equal responsibility for the accident aforesaid was the subject of a Supplemental Consent Order dated 26 September 1991 entered by Mr. Justice Wan Mohamed Mustapha, wherein it was expressly stated, *ex abundanti cautela*, that **the Third Party was not bound thereby.**

It was submitted by Counsel for the Insurer, and we agree, that in terms of efficacy there is no distinction between a consent order and any other order of the Court: see the case of *De Lasalla v. De Lasalla* [1979] 3 WLR 390 at pp. 400-401 where Lord Diplock said this:

> Financial arrangements that are agreed upon between the parties for the purpose of receiving the approval and being made the subject of a consent order by the Court, once they have been made the subject of the Court order no longer depend upon the agreement of the parties as the source from which their legal effect is derived. Their legal effect is derived from the Court order.

Similarly, in *Palmer & Anor. v. Durnford Ford & Anor.* [1992] 2 All ER 122, the Court had held that a consent order could give rise to a plea of *res judicata*, relying on *Cohen v. Jonesco* [1926] 1 KB 119 at 125. Another case on the same point is *In re South American and Mexican Company, ex parte Bank of England* [1895] 1 Ch 37.

We regret, therefore, that we are unable to agree with the learned trial Judge that there is any distinction in principle between *Tan Chik* and the present case.

The more difficult question which is of cardinal importance to this appeal is whether, as Counsel for the Third Party contends, *Tan Chik* was wrongly decided, and if it was wrongly decided, whether it should be overruled. Indeed, it was for this very reason that the learned Chief Justice had convened the present quorum of five Judges to consider this question.

In considering this question we have kept in the forefront of our minds the salutary advice of the House of Lords (Lord Bridge of Harwich, Lord Brandon of Oakbrook, Lord Brightman, Lord Ackner and Lord Goff of Chieveley) in *Food Corp. of India v. Antclizo Shipping Corp.* [1988] 2 All ER 513, that there are **two prerequisites** to a review by the House of a previous decision of the House; **first**, the House of Lords should not embark on such a review unless they feel free, if necessary, to depart from the reasoning and the decision and **secondly**, unless the House is satisfied that it would be of relevance to the resolution of the dispute in the case before them. Their Lordships stressed that they will not embark on an inquiry into an issue which is only of academic interest: see, in particular, *Sun Life Assurance Co. of Canada v. Jervis* [1944] 1 All ER 469 and *Ainsbury v. Millington* [1987] 1 All ER 929; a *fortiori*, they should not do so where the inquiry involves a review of a previous decision of the House, because it cannot be right to hold, *obiter*, that such a previous decision was wrong. (Per Lord Goff at p. 516 c to d).

In our view, the same principles would apply to this Court, it being, like the House of Lords, an appellate Court of last resort.

Having cautioned ourselves as aforesaid, we are satisfied that the two prerequisites aforesaid have been met, and that this Court should undertake a review of *Tan Chik*.

A policy of insurance against third party risks in relation to the user of a motor vehicle to conform with s. 75(1) of the Ordinance, must insure the owner and driver of a motor vehicle, "in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle ... on a road ... ." Then follows a proviso which is not material for purposes of the present appeal.

As we have indicated, it is common ground that at the material time the Policy in force was a policy of insurance against third party risks in relation to motor lorry No. BAP 6167 which conformed with s. 75(1) of the Ordinance.

The Policy itself **apparently** contained insurance cover against **any** sum for which the Insured becomes liable to a third party to pay under any judgment recovered against the Insured for death or bodily injury arising out of the use of the lorry BAP 6167, since "the Liability to Third Party" Clause was as follows:

> **Section II - Liability To Third Parties**
>
> 1. The company will subject to the Limits of Liability indemnify the Insured in the event of accident caused by or arising out of the use of the Motor Vehicle ... against **all** sums including claimant's costs and expenses which the Insured shall become **legally liable** to pay in respect of:
>
> (a) death or bodily injury to any person;
>
> (b) damage to property.

(Emphasis supplied)

This point regarding the extent of insurance cover in the case of liability to third parties, is emphasised by the Schedule to the Policy, which under the sub-heading "Limits of Liability", says:

> Limit of the amount of the company's liability under Section II-1(a) in respect of any one claim or series of claims arising out of one event ... **Unlimited**.

(Emphasis supplied)

The expression "legally liable" appearing in the Policy has a meaning equivalent to "responsible in law". (See, *Nominal Defendant (Qld) v. Taylor* [1982] 56 ALJR 698). It is therefore not unfair to say that 'liability' in law, unless the context otherwise requires, means a duty owed to another enforceable by sanctions. However, when used in the context of liability insurance ordinarily means liability to pay a definite sum imposed by a final judgment against an insured (see *Girard v. Commercial Standard Insce Co.* [1944] 152 P (2d) 509, 513) or by an award or a settlement by way of an agreement (see

Broadlands Properties Ltd. v. Guardian Assurance Co. Ltd. [1984] 3 ANZIC 60.552). So also, Shawcross, in his classic work on *Motor Insurance*, 2nd Edn., at p. 514, commenting on the phrase "legally liable" appearing in a standard "Liability to Third Party" clause which, omitting immaterial portions, is identical to that appearing in the Policy (reproduced above) says:

> At first sight the words printed above might seem to suggest that the insurers are only obliged to pay an indemnity in respect of a liability which has been transformed into a judgment debt (cf the provisions of s. 10 of the Road Traffic Act 1934, under which they are obliged to discharge such a liability directly to the third party. See *ante*, chapter V, p. 278.); in other words, that 'legally liable' (in other policies "liable at law" and similar expressions are used) means liability which "shall" after the accident "become" established in a Court of law. It is submitted, however, that this is not the meaning of this clause, since the liability is expressly said to be in respect of death or bodily injury and damage to property. It follows that the obligation to indemnify arises as soon as the liability is incurred (See per Tomlin J in *Hood's Trustees v. Southern Union General Insurance Co. of Australasia* [1928] Ch. 793 at p. 800, and see further, chapter II, *ante*, pp.72 *et seq*, as to the meaning of "indemnity"), but the obligation to pay a sum of money in discharge of the indemnity does not arise until the amount thereof is quantified (i.e. until the amount of the compensation or damages due to the third party is determined in one way or another, e.g. by settlement with him or by judgment. In this connection the case of *Martin v. Bannister* [1933] 47 L1. L.R. 270, post, chapter X, should be noticed.).

Now, the duty of insurers to satisfy judgements against persons insured in respect of third party risks is imposed by s. 80(1) of the Ordinance, which provides:

> 80(1) If, after a certificate of insurance has been delivered under sub-s. (4) of s. 75 of this Ordinance to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under para. (b) of sub-section (1) of s. 75 of this Ordinance (being a liability covered by the terms of the policy) is given against the insured person, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgments.

The expression, "liability covered by the terms of the policy" appearing in parenthesis in s. 80(1) of the Ordinance is defined by s. 80(5), now s. 96(5), of the Act to mean "a liability which is covered by the policy or would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled the policy."

By s. 80(4) of the Ordinance, now s. 96(4) of the Act, it is provided that:

> 80(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability of a person insured by a policy exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy in respect of that liability, he shall be entitled to recover the excess from that person.

One effect of s. 80(4) is that since liability of insurers against third party risks under s. 80(1) is unlimited, any kind of limitation, whether stipulating that the insured has to pay the first RM, *x* of any liability or that the insurance company would not pay more than RM, *y* of any liability, or by means of a rateable contribution clause, would be void and ineffective, as against a third party who can recover the full amount from the insurance company. But, the insurance company may have a right of recovery of any excess from its insured. However, it could be objected that such a policy does not comply with the requirements of s. 75(1) of the Ordinance (equivalent to s. 91(1) of the Act.)

Section 80(4) contemplates a situation where the policy is voidable at Common Law on the ground of non-disclosure or misrepresentation of material facts and the insurance company has not taken the necessary steps under s. 80(3) to obtain a declaration as to non-liability on this ground in time or at all or if the policy is voidable, under a condition of the policy. In such a situation, the insurance company would still be legally obliged to pay a third party in enforcement proceedings brought under s. 80(1) but it has a right of recovery from its insured.

We are supported in our views regarding the effect of s. 80(4) by the following commentary (which carries the not unformidable authority of Mr. Justice McNair and Mr. Stephen Chapman, as he then was) on the effect of the provision in the UK legislation corresponding to our s. 80(4), appearing in *Halsbury's Laws of England*, 3rd Edn., Vol. 22, para. 773:

> Rights of insurers against their assured: If insurers, by virtue of the provisions relating to payments on judgments, become liable to pay to a third party a sum in excess of what, under the policy, they would be liable to pay to their assured in respect of the relevant accident, they are entitled to recover the excess from the assured. It would seem therefore that, where the insurers would not be liable to pay anything under their policy by reason of misrepresentation or non-disclosure giving them a right to repudiate, they are entitled to recover from the assured anything which they are compelled by the statutory provisions to pay, whether or not they seek to obtain the relief which the statutory provisions afford them.

The above passage has been reproduced in *Halsbury's Laws of England*, 4th Edn., Vol. 25, para. 779.

Such being the case, it is difficult to see how s. 80(4) supports the interpretation of s. 80(1) according to *Tan Chik*.

To recapitulate, as the language of s. 80(1), expressly directs attention to the liability covered by "the terms of the policy", in construing the sub-section it is necessary to have regard to the terms of the Policy (see *Bankers & Traders Insurance Co. Ltd. v. National Insurance Co. Ltd.* (*ibid*) per Lord Scarman) subject to the statutory provisions rendering certain conditions or restrictions of no effect against third parties (see ss. 78 and 79 of the Ordinance, now ss. 94 and 95 of the Act, and derived from s. 38 of the UK Road Traffic Act 1930, and s. 12 of the UK Road Traffic Act 1934). Thus, insurers against third party risks, are not obliged to carry a wider scope of liability than they have agreed by their policy to carry.

The next topic, we should like to address, is the **purpose** underlying our legislation on compulsory motor insurance against third party risks, which is derived from and follows the language of the corresponding UK legislation. Thus, English cases on this point will provide assistance.

In *Zurich General Accident and Liability Insurance Co. Ltd. v. Morrison* [1942] 72 L1L Rep 167, CA 173-174, Lord Goddard referred to the unsatisfactory situation before the UK Road Traffic Act of 1934 was passed, in the following terms:

> Part II of the Road Traffic Act 1934 was passed to remedy a state of affairs that became apparent soon after the principle of compulsory insurance against third party risks had been established by the Road Traffic Act of 1930. That Act and the Third Parties (Rights Against Insurers) Act, passed in the same year, would naturally have led the public, at least those who were neither lawyers nor connected with the business of insurance, to believe that if thereafter they were, through no fault of their own, injured or killed by a motor car, they or their dependants would be certain of recovering damages, even though the wrongdoer was an impecunious person. How wrong they were quickly appeared. Insurance was left in the hands of companies and underwriters who could impose what terms and conditions they chose. Nor was there any standard form of policy, and any company, who could fulfil the not very onerous financial requirements that were necessary for acceptance as an approved insurer, could hedge the policies with so many warranties and conditions that no one advising an injured person could say with any certainty whether, if damages were recovered against the driver of the car, there was a prospect of recovering against the insurers... In the case of motor car insurance it was the third parties who needed the warning, and unfortunately they had no voice as to the warranties or conditions that were inserted in policies, though it was only because they held a policy that careless drivers were enabled to drive and put other persons in peril. It is not surprising, therefore, that by 1934 Parliament interfered, and by s. 10 of the Act of that year (from which our s. 80(1) of the Ordinance is derived) they took

> steps towards remedying a position which to a great extent nullified the protection that compulsory insurance was intended to afford. Generally speaking, s. 10 was designed to prevent conditions in policies from defeating the rights of third parties.

What therefore appears to be of capital importance in this appeal is the interrelation between ss. 75(1), 80(1) and 80(4) of the Ordinance, (derived from s. 36 of the UK Road Traffic Act 1930, and s. 10(1) and (4) of the UK Road Traffic Act 1934, respectively), not forgetting, of course, the provisions of the Third Party Liability Clause in the Policy (reproduced above) which are statutorily recognised.

The question of construction thus posed is perfectly easy to answer in the context of road accidents where there is **no** apportionment of responsibility between independent tortfeasors. The question is, however more difficult to answer when, as in the present case, there **is** this complicating factor.

The intention of the United Kingdom legislation of 1934 in the field of compulsory motor insurance against third party risks was undoubtedly to give injured third parties full and effective protection. (See Cumming-Bruce LJ in *Harker v. Caledonian Insurance* [1979] 2 LL Rep. 193, 203.)

And, in the Court of Appeal, Lord Denning MR, the presiding Judge in the *Harker* case, when making a detailed examination of the history and wording of the United Kingdom legislation on compulsory motor insurance against third party risks, did pronounce upon the effect of s. 10(1) of the UK Road Traffic Act 1934. What his Lordship said was this (at p. 196 col. 1):

> They (s. 10(1) and 10(4) of the Road Traffic Act 1934, equivalent to our s. 80(1) and 80(4) of the Ordinance) make the insurance company liable on the statute in respect of the **classes of liability** against which they were bound to insure, but with no limit as to quantum at all. Even if they inserted a limit on the amount payable under the policy, it was of no effect against the third party. But they could recover the excess from the driver or owner of the car.

(Emphasis supplied)

And, after reproducing s. 10(1), Lord Denning added on the same page:

> In that sub-section, the words -
>
> > ... pay to the person entitled to the benefit of the judgment any sum payable thereunder in respect of the liability ...

mean the judgment sum. It is the total 'sum payable thereunder'. I see no justification for limiting those words to a part only of that sum. It is the judgment sum which has to be paid by the insurer.

(Emphasis provided)

It is true that in *Harker's* case, Lord Denning wrote the dissenting judgment but neither the Judges who constituted the majority in the Court of Appeal nor Lord Diplock who spoke for the House of Lords when the matter went on further appeal, disapproved of the above passages in Lord Denning's judgment. The bone of contention in *Harker's* case revolved around the effect of certain additional provisions in the British Honduras statute limiting the insurer's liability to third parties to a maximum sum, which are not to be found in the English statute or in our statute. It is with regard to the effect of these additional provisions in the British Honduras statute that there was a divergence of opinion between Lord Denning and the other Judges. Lord Denning's reasoning reflected in the above extracts from his judgment was left untouched and are, therefore, of assistance in deciding the present case, bearing in mind that the relevant provisions of the English statute and our statute are *in pari materia*.

Having regard to the natural meaning of the words appearing in s. 80(1) of the Ordinance and the purpose underlying the legislation for compulsory motor insurance against third party risks in road accidents, which is to give full and effective protection to injured third parties, our view is that it is **the total sum** payable under a judgment in respect of the liability of an insured to a third party which an insurer is required to pay to such third party. In effect, s. 80(1) confers a right on a stranger to the insurance contract, that is, a third party, who has obtained a judgment against an insured, to recover from an insurer what he could have recovered from an insured.

The next question to be logically considered is what is the sum which the Third Party could have recovered against the Insured in the present case where you have a situation involving independent tortfeasors with an apportionment of responsibility between them under an order of Court?

To recapitulate, at Common Law, if each of several persons, not acting in concert, commits a tort against another person substantially contemporaneously and causing the same or indivisible damage, each tortfeasor is liable for the same damage. (See *Oli Mohamed v. Keith Murphy & Anor.* [1969] 2 MLJ 244, at pp. 245 col. 2E to 246 col. 1A per Choor Singh J applying *Dingle v. Associated Newspapers Ltd.* [1961] 2 QB 162 and *Drinkwater v. Kimber* [1952] 2 QB 281).

Here, Yap Mun Chuan, Chai Ten Wai and vicariously the Insured, were undoubtedly independent tortfeasors and each was liable for the same damage caused, and therefore **each** is liable to pay the **total sum** of the damages, costs and interest payable under the Consent Judgment dated 5 June 1986 notwithstanding the fact that responsibility for the accident had been equally apportioned between them under the Supplemental Consent Order dated 26 September 1991. (See *Oli Mohamed v. Keith Murphy & Anor*. *ibid* at pp. 245 col. 2E to 246 Col. 1A). It follows, that since this is the sum which the Third Party can recover from the Insured, this is also the sum which the Third Party is entitled to recover from the Insurer. In other words, this is the sum which the Insured is **"legally liable"** to pay to the Third Party within the meaning of "the Liability to Third Party" Clause of the Policy, reproduced above, and this is also the sum for which the Insurer is bound by statute to indemnify the Insured.

There is no valid reason for restricting the amplitude of the provisions of s. 80(1) that are clearly enough intended to secure comprehensive protection to drivers of motor vehicles not only for their own good but for the benefit of those who suffer death or injury by the use of such vehicles on the public road.

With respect, the interpretation so eloquently presented by Dr. Das on behalf of the Insurers, if upheld, could render such protection illusory. Take a case where only one of two independent tortfeasors is insured and the other is uninsured and impecunious or is a friend or relative of the injured third party and uninsured, who the injured third party does not wish to sue, on such an interpretation an injured third party would not get full and effective protection. Not to put too fine a point on it, such an interpretation could result in injustice and defeat the purpose underlying legislation on compulsory motor insurance against third party risks which is to give full and effective protection to injured third parties.

With profound respect, therefore, *Tan Chik*, insofar as it holds that in a situation involving independent tortfeasors, insurers of motor vehicles against third parties are liable to satisfy judgments obtained against their insured to the extent only of the proportion of responsibility for the accident adjudged against their insured, is a decision with which we are unable to agree and should not be followed.

Accordingly, we respectfully agree with Lord Denning MR when he said in *Harker's* case (*ibid* at p. 196 col.1), with reference to s. 10(1) of the UK Road Traffic Act of 1934 (equivalent to s. 80(1) of the Ordinance), that it

makes insurance companies liable on the statute in respect of **classes of liability** against which they were bound to insure but with no limit as to quantum at all.

We note that Shawcross in his work on *Motor Insurance*, 2nd Edn. at pp. 282, 283, has made the same point as Lord Denning, though in an amplified form, thus:

> It will be seen therefore that the expression 'a liability covered by the terms of the policy' has two possible meanings:
>
> 1. It may mean a 'liability in respect of which an indemnity is enforceable under the terms of the policy or which would be so enforceable but for the fact that the insurers are entitled to avoid or cancel the policy' (i.e. 'terms' in the sub-section refers to all classes of terms in the policy).
>
> 2. It may mean a liability within the risks specified in the policy or which would be within the risks specified in the policy but for the fact that the insurers are entitled to avoid or cancel the policy, etc., **or are entitled to evade liability thereunder**' (i.e. 'terms' in the sub-section refers only to terms descriptive of risk).
>
> Nevertheless, it is apparent that, if the first meaning is to be given to these words, the whole object of this Part of this Act would be defeated. If only for that reason the second interpretation, however illogical, must be adopted.
>
> It is submitted, therefore, that 'liability covered by the policy' means -
>
> (1) Liability which comes within (or arises out of) a risk apparently insured by the express terms of the policy, **whether or not** it is a -
>
> (2) Liability in respect of which the insurers are entitled to refuse an indemnity on the ground that the assured has committed some breach of the terms of the policy.

Similarly, we respectfully agree with Lord Denning when he said, with reference to the words: "pay to the person entitled to the benefit of the judgment any sum payable thereunder in respect of the liability ..." appearing in s. 10(1) or the UK Road Traffic Act 1934, that they, '**mean the judgment sum. It is the total sum payable thereunder.** I see no justification for limiting those words to a part only of that sum. It is the judgment sum which has to be paid by the Insurer." (Emphasis supplied) This flatly contradicts *Tan Chik* when it says (at p. 220 col. 1E): "Looking at the wordings of s. 80(1) of the Ordinance we cannot say that the learned Judge was wrong in his interpretation. The insurer is not bound by statute to pay the third party the judgment given in his favour but only Third 'any sum payable thereunder'."

At this point, we would interpolate to set the record straight by saying that the Supreme Court in *Tan Chik* misread the order of the trial Judge Mr. Justice Ajaib Singh when it said: "In this case, the trial Judge gave judgment in favour of the third party and apportioned the liability **as well as the damages to be paid by the parties.**" (Emphasis supplied). In truth, although there was an apportionment of liability, in other words, of responsibility, there was **no** apportionment of damages to be paid by the parties concerned.

With profound respect, we must also add that we are unable to agree with *Tan Chik* when it says that s. 80(1) of the Ordinance, should be interpreted subject to s. 10(1) and (2) of the Civil Law Act 1956. Upon the Common Law principle of fault liability for road accidents in this country there have been engrafted two statutory measures - one being the provisions for indemnity and contribution between tortfeasors, which is unknown to the Common Law; namely s. 10(1) and (2) of the Civil Law Act, the other being compulsory third party insurance legislation. It is important to fit these three elements - the Common Law principle, the contribution legislation and the compulsory third party insurance legislation - in such a manner as to ensure that they work in harmony without injustice.

Referring to the unsatisfactory position at Common Law which led to the introduction of the tortfeasor legislation, Mr. O.C. Mazengarb QC in his deservedly admired work "*Negligence on the Highway*" says this (at p. 272):

> Prior to the passing of the tortfeasor legislation, one of two or more joint or independent tortfeasors was often in an unfortunate position. He could not secure the joinder of another wrongdoer, and he could not afterwards sue him for a share of the damage which he had helped to cause. Even where judgment had been obtained by the plaintiff against both wrongdoers and execution had been levied against one only, the party who had paid the full bill was unable to sue the other for a share. There was no right of contribution between tortfeasors. Under the reformed procedure, claims for contribution are enforceable between tortfeasors who are liable in respect of the same damage.

And then, on the same page, referring to the procedural changes introduced by the tortfeasor legislation, Mr. Mazengarb says this:

> The issue as between two persons who have been responsible for an accident causing damage to another, may now be dealt with in the following ways: *Calvert v. Pick* [1954] 1 All ER 566.
>
> (i) in a separate action subsequently brought by one tortfeasor against the other. *White v. Carrara Ceiling Co. Ltd.* [1944] NZLR 577;
>
> (ii) through the machinery of a Third Party Notice issued by a defendant against another person whom he may consider to have been wholly or partly to blame;

(iii) by cross-contribution notices where two defendants are sued;

(iv) by an application to the trial Judge to determine the proportion of damage which each person should pay *Bell v. Holmes* [1956] 3 All ER 449.

Bearing in mind what has just been said, it will be seen that sub-ss. (1) and (2) of s. 10 of the Civil Law Act are concerned with the reformation of procedural law in proceedings against, and contribution between joint or several tortfeasors and it is difficult to see what relevance they have to the question of the **extent** of the liability of insurers against third party risks which is an entirely separate issue depending upon the construction of the relevant compulsory third party insurance legislation and the terms of the relevant contract of insurance. Insofar as third party liability under the Ordinance is concerned, injured third parties in seeking to enforce satisfaction of a judgment obtained against insurers by virtue of s. 80(1) of the Ordinance will not be affected by any order as to apportionment of responsibility between tortfeasors whether joint or independent. However, if a tortfeasor is called upon to pay the full amount in the first instance, his insurer will, of course, pay the full amount but his insurer will be subrogated to his right of contribution and should be left ultimately only bearing his due proportion.

In the result, we would dismiss this appeal with costs, though our grounds for doing so are wholly different from those advanced by the learned trial Judge. Deposit to Respondent to account of taxed costs.

Lamin Mohd Yunus PCA (Supporting Judgment):

I have had the privilege of reading the draft judgment of my brother Judge Edgar Joseph Jr. FCJ and with the greatest of respect I think he is right in his conclusion that the decision in *Tan Chik* should not be followed and the present appeal before this Court should be dismissed for reasons as discussed therein.

After having read the draft judgment I did not intend at first to say a word more but on reflection I thought I should add a word or two.

The learned trial Judge, in this case, Shaik Daud J (as he then was) had this to say on *Tan Chik*:

> The question is whether the decision in *Tan Chik b. Ibrahim's* case (*supra*) is applicable in the present case. On going through the Supreme Court case one very clear distinction stands out. In that case liability was determined by the High Court on a 50-50 basis. The High Court found the rider of the motor Vespa and the driver of the lorry to be equally liable and this was confirmed by the Supreme Court. In the present case, liability was never determined and this is a very clear distinction on the facts of both cases. If the Court had ordered liability

> say on a 50-50 basis then it is my view that the plaintiff in this case is bound by the decision in *Tan Chik b. Ibrahim* (*supra*). Since there was no decision on liability, the plaintiff is therefore entitled to go against any of the defendants for full settlement of the judgment.

I must note here in relation to this appeal that there was a consent judgment on liability in the first suit *vide* P162 of 1981 entered before Eusoff Chin J (as he then was) on 1 August 1985 on a 50-50 basis. I am not concerned at this point with the effect of a consent judgment because it has been dealt with by my brother Judge Edgar Joseph Jr. with whose view I concur. The primary issue before this Court, if I may so express, is on the question of the entitlement of a third party in a personal claim case and more specifically is whether his claim will be affected or graduated according to the apportionment of liability. In effect this issue calls in for interpretation of s. 80(1) of the Road Traffic Ordinance 1958 (now s. 96(1) of the Road Transport Act 1987) which has caused some problems.

The Supreme Court in *Tan Chik* agreed with the trial Judge, Ajaib Singh J (as he then was) in his construction of s. 80(1) and he said:

> Under s. 80(1) of the Road Traffic Ordinance insurers are obliged to satisfy judgments obtained by third parties for damages for the death of or bodily injury to persons in motor accidents involving vehicles which are insured by them against third party risks. In this case the Safety Life & General Insurance Sdn. Bhd. were duty bound to satisfy the judgment to the extent of 50 per cent which the plaintiff had obtained against their own insured namely the owner and driver of the motor lorry but they were not obliged to satisfy the other 50 per cent of the judgment which the plaintiff had obtained against the owner and rider of the motor Vespa Abdul Aziz bin Ibrahim as they had at no time covered him with any risk in respect of third party liability.

My brother Judge Edgar Joseph Jr. has examined the relevant English decisions relating to compulsory motor insurance against third party risks in order to find a solution to the issue at hand and I entirely agree with his reasoning and conclusion. The apparent complexity of the issue as evidenced by the efforts to construe the words of the statute such as "liability covered by the terms of the policy" and "any sum payable thereunder" etc. has no doubt caused some anxiety in the business of insurance (e.g. *Bakers & Traders Insurance Co. Ltd. v. National Insurance Co. Ltd.* [1985] 1 MLJ 401, *Zurich General Accident and Liability Insurance Co. Ltd. v. Morrison* [1942] 72 LIL Rep. 167 CA 174, *Austin v. Zurich General Accident and Liability Insurance Co. Ltd*. [1945] 1 All ER 316, *Harker v. Caledonian Insurance Co.* [1979] 2 LL Rep. 193.) Third parties and their dependents have had no less anxiety for their situation is even more precarious. In the context of earlier decisions, may I interject with a couple of straightforward questions. For example why

should the claim of a passenger in a motor vehicle involved in an accident or an innocent foot passenger otherwise called the third party be dependant on the apportionment of liability of those who caused the accident? The innocent passenger never contributes in anyway whatsoever in causing the accident. He also has nothing to do with the vehicle concerned except sitting in it as a passenger. Why should he be penalised by having his claim slashed down according to the liability as apportioned? Was the trial Judge in the instant appeal right when he said that since there was no decision on liability the plaintiff was therefore entitled to go against any of the defendants for full settlement of the judgment.

On the other hand if there had been a decision on liability like the consent judgment, then it would be unfortunate for the plaintiff because he would have to receive less than the full amount because according to him he would then be bound by *Tan Chik*. In the case of *Tan Chik*, the learned trial Judge decided that the respondent's insurance company was duty bound to satisfy only 50 per cent of the whole judgment which the plaintiff had obtained against the owner and driver of the lorry because the driver was adjudged 50 per cent at a fault. What if the driver was found 30 per cent liable, then the judgment could only be satisfied to the extent of 30 per cent. Suppose the rider of the motor Vespa instead was found to be wholly at fault, I imagine in that situation the insurer of the driver and owner of the lorry namely Safety Life & General Insurance Sdn. Bhd. would not have to pay Tan Chik a single cent. It is only proper and fair not to penalise the party who has nothing to do with the cause of the accident. He therefore must be fully compensated no matter what the apportionment of liability is.

There is a side issue in *Tan Chik* in the way it was decided and it is this. Which insurer is bound to compensate the injured third party? Lee Hun Hoe CJ (Borneo) (as he then was) said:

> The insurer was only responsible to satisfy the judgment against the insured. The insurer was never at any risk in respect of the motor Vespa within the terms and conditions of the policy at the time of the accident. So that the third party cannot expect the insurers to be liable for the judgment obtained against the rider of the motor Vespa.

Impliedly it would be the absent insurer of the rider of the motor Vespa who must come to the rescue in respect of the other 50% if *Tan Chik* is minded to pursue against him. In the present appeal there was some confusion in the Court below in the matter of liability notwithstanding that there was a consent judgment on a 50-50 basis pronounced by Eusoff Chin J (as he then was). The issue of liability or more precisely the apportionment of liability does not influence the decision of this Court. It is the really a matter between the parties

responsible for causing the accident. The insurers who have been ordered to satisfy the full judgment may avail themselves for contribution under s. 10(1) and (2) of the Civil Law Act. Nothing was said by the trial Judge in *Tan Chik* on the operation of s. 10. Perhaps it did not arise in view of his judgment in that he did not make any order apportioning damages. His order was confirmed only to the apportionment of liability. However the Supreme Court in *Tan Chik* did say:

> Apparently, the trial Judge was acting under s. 10(2) of the Civil Law Act 1956 under which the Court would have power to exempt any person from liability to make contribution or to direct that the contribution to be recovered from any person shall amount to a complete indemnity. The trial Judge did not deem fit to exercise his discretion nor was he asked to do so on the facts of this case.

The trial Judge could not have acted under s. 10(2) of the Civil Law Act because in "any proceedings for contribution under this section" the Court will only concern itself as to the "amount" of the contribution and further that was not a "proceedings for contribution". It was a suit to enforce the whole of the judgment against the insurers. It would have been improper to ask the Judge to exercise his discretion and even if he did exercise his discretion he must not fail to give his reasons. With respect therefore, I agree that we depart from *Tan Chik*.

The trial Judge in the present appeal decided that the plaintiff (who is the respondent in this appeal named Lim Tiok) was "entitled" to go against any of the defendants for full settlement of the judgment "since there was no decision on liability." Lim Tiok, the plaintiff in the first suit (No. P 162 of 1981) sued Yap Mun Chuan (1st defendant) the driver of motor lorry NC 3467 in which he himself was only a passenger, together with Chan Ten Wei (2nd defendant) driver of motor lorry BAP 6167 and the owner of the motor lorry namely Syarikat Kenderaan Central (M) Sdn. Bhd. (3rd defendant). The 2nd and 3rd defendants were insured by the same insurer, namely Malaysian National Insurance Sdn. Bhd. Kuala Lumpur (MNI for short) the appellant in the instant appeal. Lim Tiok in the Court below chose to sue MNI. Since full settlement of the judgment has been ordered by the trial Judge below, this appeal must therefore be dismissed though for reasons different from those of the learned Judge.

Reported by Gan Peng Chiang